

AMENDED IN ASSEMBLY AUGUST 7, 2000
AMENDED IN ASSEMBLY JUNE 28, 2000
AMENDED IN ASSEMBLY AUGUST 26, 1999
AMENDED IN ASSEMBLY JULY 7, 1999
AMENDED IN ASSEMBLY JUNE 24, 1999
AMENDED IN SENATE JUNE 2, 1999
AMENDED IN SENATE APRIL 14, 1999

SENATE BILL

No. 898

**Introduced by Senator Dunn
(Coauthor: Senator Sher)**

February 25, 1999

An act to amend Sections 10235.22 and 10236 of, and to add Sections 10236.1, 10236.11, 10236.12, 10236.13, and 10236.14 to, the Insurance Code, relating to long-term care insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 898, as amended, Dunn. Long-term care renewal provisions.

Existing law provides that every individual long-term care insurance policy shall contain a renewal provision that is either guaranteed renewable or noncancelable.

This bill would also require group long-term care policies and certificates to be either guaranteed renewable or noncancelable.

This bill would require approval of the Insurance Commissioner before individual or group long-term care insurance may be offered, sold, issued, or delivered in this state, and would specify the duties of insurers and the commissioner in this regard. This bill would limit premium increases for these policies, as specified, ~~and would provide for a contingent benefit upon lapse, as specified.~~ The bill would enact other related provisions. These provisions would apply to policies and certificates issued on or after July 1, 2002, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature that
2 certain premiums and conditions for long-term care
3 insurance shall be subject to the prior approval of the
4 Insurance Commissioner.

5 SEC. 2. Section 10235.22 of the Insurance Code is
6 amended to read:

7 10235.22. Benefits under individual long-term care
8 insurance policies issued before July 1, 2002, shall be
9 deemed reasonable in relation to premiums if the
10 expected loss ratio is at least 60 percent, calculated in a
11 manner which provides for adequate reserving of the
12 long-term care insurance risk. In evaluating the expected
13 loss ratio, due consideration shall be given to all relevant
14 factors, including the following:

15 (a) Statistical credibility of incurred claims experience
16 and earned premiums.

17 (b) The period for which rates are computed to
18 provide coverage.

19 (c) Experienced and projected trends.

20 (d) Concentration of experience within early policy
21 duration.

22 (e) Expected claim fluctuation.

23 (f) Experience refunds, adjustments, or dividends.

24 (g) Renewability features.

25 (h) All appropriate expense factors.



- 1 (i) Interest.
- 2 (j) Experimental nature of the coverage.
- 3 (k) Policy reserves.
- 4 (l) Mix of business by risk classification.
- 5 (m) Product features, such as long elimination
- 6 periods, high deductibles, and high maximum limits.

7 SEC. 3. Section 10236 of the Insurance Code is
8 amended to read:

9 10236. Every long-term care policy and certificate
10 shall be either guaranteed renewable or noncancelable.

11 (a) “Guaranteed renewable” means that the insured
12 has the right to continue coverage in force if premiums
13 are timely paid during which period the insurer may not
14 unilaterally change the terms of coverage or decline to
15 renew, except that the insurer may, in accordance with
16 provisions in the policy, and in accordance with Section
17 10236.1, change the premium rates to all insureds in the
18 same class. The “class” is determined by the insurer for
19 the purpose of setting rates at the time the policy is issued.

20 (b) “Noncancelable” means the insured has the right
21 to continue the coverage in force if premiums are timely
22 paid during which period the insurer may not unilaterally
23 change the terms of coverage, decline to renew, or
24 change the premium rate.

25 (c) Every long-term care policy and certificate shall
26 contain an appropriately captioned renewability
27 provision on page one, which shall clearly describe the
28 initial term of coverage, the conditions for renewal and,
29 if guaranteed renewable, a description of the class and of
30 each circumstance under which the insurer may change
31 the premium amount.

32 SEC. 4. Section 10236.1 is added to the Insurance
33 Code, to read:

34 10236.1. No individual or group long-term care
35 insurance policy or certificate may be offered, sold,
36 issued, or delivered to a resident of this state without the
37 prior approval of the commissioner pursuant to the
38 provisions of this chapter.

1 The commissioner shall review and approve individual
2 and group policy forms and certificates and outlines of
3 coverage.

4 All initial rate filings shall be subject to the following:

5 (a) No approval for an initial premium schedule shall
6 be granted unless the actuary performing the review for
7 the commissioner certifies that the initial premium rate
8 schedule is sufficient to cover anticipated costs under
9 moderately adverse experience and that the premium
10 rate schedule is reasonably expected to be sustainable
11 over the life of the form with no future premium
12 increases anticipated. The certification may rely on
13 supporting data in the filing. The actuary performing the
14 review may request an actuarial demonstration that the
15 assumptions the insurer has used are reasonable. The
16 actuarial demonstration shall include either premium
17 and claim experience on similar policy forms, adjusted for
18 any premium or benefit differences, relevant and
19 creditable data from other studies, or both.

20 (b) The insurer shall submit to the commissioner for
21 approval a rate filing for each policy form that includes
22 at least all of the following information:

23 (1) An actuarial memorandum that describes the
24 assumptions the insurer used to develop the premium
25 rate schedule. The actuarial assumptions shall include,
26 but not be limited to, a sufficiently detailed description of
27 morbidity assumptions, voluntary lapse rates, mortality
28 assumptions, asset investment yield rates, a description of
29 all expense components, and plan and option mix
30 assumptions. The memorandum shall also include the
31 expected lifetime loss ratio and projections of yearly
32 earned premiums, incurred claims, incurred claim loss
33 ratios, and changes in contract reserves.

34 (2) An actuarial certification consisting of at least all of
35 the following:

36 (A) A statement that the initial premium rate
37 schedule is sufficient to cover anticipated costs under
38 moderately adverse experience and that the premium
39 rate schedule is reasonably expected to be sustainable

1 over the life of the form with no future premium
2 increases anticipated.

3 (B) A statement that the policy design and coverage
4 provided have been reviewed and taken into
5 consideration.

6 (C) A statement that the underwriting and claims
7 adjudication processes have been reviewed and taken
8 into consideration.

9 (D) A complete description of the basis for contract
10 reserves that are anticipated to be held under the form,
11 to include all of the following:

12 (i) Sufficient detail or sample calculations provided so
13 as to have a complete depiction of the reserve amounts
14 to be held.

15 (ii) A statement that the assumptions used for reserves
16 contain reasonable margins for adverse experience.

17 (iii) A statement that the net valuation premium for
18 renewal years does not increase (except for attained-age
19 rating where permitted).

20 (iv) A statement that the difference between the gross
21 premium and the net valuation premium for renewal
22 years is sufficient to cover expected renewal expenses, or
23 if that statement cannot be made, a complete description
24 of the situations in which this does not occur and the type
25 and level of change in the reserve assumptions that would
26 be necessary for the difference to be sufficient. An
27 aggregate distribution of anticipated issues may be used
28 as long as the underlying gross premiums maintain a
29 reasonably consistent relationship. If the gross premiums
30 for certain age groups appear to be inconsistent with this
31 requirement, the commissioner may request a
32 demonstration under subdivision (a) based on a standard
33 age distribution.

34 (E) A statement that the premium rate schedule is not
35 less than the premium rate schedule for existing similar
36 policy forms also available from the insurer except for
37 reasonable differences attributable to benefits or a
38 comparison of the premium schedules for similar policy
39 forms that are currently available from the insurer with
40 an explanation of the differences.

1 The provisions of this section are applicable to all
2 policies and certificates issued on or after July 1, 2002.
3 Until July 1, 2002, or 90 days after approval of policies and
4 certificates submitted for approval pursuant to this
5 section, whichever comes first, insurers may continue to
6 offer and market previously approved long-term care
7 insurance policies and certificates.

8 SEC. 5. Section 10236.11 is added to the Insurance
9 Code, to read:

10 10236.11. All actuaries used by the commissioner to
11 review rate applications submitted by insurers pursuant
12 to this chapter, whether employed by the department or
13 secured by contract, shall be members of the American
14 Academy of Actuaries with at least five years' relevant
15 experience in long-term care insurance industry pricing.
16 If the department does not have actuaries with the
17 experience required by this section, the commissioner
18 shall contract with actuaries to review all rate
19 applications submitted by insurers pursuant to this
20 chapter. If the department has actuaries that have
21 experience required by this section, but not enough of
22 those experienced actuaries to perform the volume of
23 work required by this chapter, the commissioner may
24 contract with independent actuaries, as necessary.

25 The commissioner shall promulgate regulations to
26 maintain the confidentiality of rate filings and
27 proprietary insurer information and to avoid conflicts of
28 interest should independent actuaries be used.

29 SEC. 6. Section 10236.12 is added to the Insurance
30 Code, to read:

31 10236.12. No insurer may increase the premium for an
32 individual or group long-term care insurance policy or
33 certificate approved for sale under this chapter unless the
34 insurer has received prior approval for the increase from
35 the commissioner.

36 The insurer shall submit to the commissioner for
37 approval all proposed premium rate schedule increases,
38 including at least all of the following information:

39 (a) Certification by a qualified actuary that:

(1) If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated.

(2) The premium rate filing is in compliance with the provisions of this section.

(b) An actuarial memorandum justifying the rate schedule change request that includes all of the following:

(1) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase, and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale.

(A) Annual values for the five years preceding and the three years following the valuation date shall be provided separately.

(B) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase.

(C) The projections shall demonstrate compliance with subdivision (a) of Section 10236.13.

(D) In the event the commissioner determines that a premium rate increase is justified due to changes in laws or regulations that are retroactively applicable to long-term care insurance previously sold in this state, then:

(i) The projected experience should be limited to the increases in claims expenses attributable to the changes in law or regulations.

(ii) In the event the commissioner determines that potential offsets to higher claims costs may exist, the insurer shall be required to use appropriate net projected experience.

(2) Disclosure of how reserves have been incorporated in this rate increase.

(3) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other

1 actions taken by the company have been relied on by the
2 actuary.

3 (4) A statement that policy design, underwriting, and
4 claims adjudication practices have been taken into
5 consideration.

6 (5) In the event that it is necessary to maintain
7 consistent premium rates for new certificates and
8 certificates receiving a rate increase, the insurer shall file
9 composite rates reflecting projections of new certificates.

10 (c) A statement that renewal premium rate schedules
11 are not greater than new business premium rate
12 schedules except for differences attributable to benefits,
13 unless sufficient justification is provided to the
14 commissioner.

15 (d) Sufficient information for approval of the
16 premium rate schedule increase by the commissioner.

17 (e) The provisions of this section are applicable to all
18 policies and certificates issued on or after July 1, 2002.
19 Until July 1, 2002, or 90 days after approval of policies and
20 certificates submitted for approval pursuant to this
21 section, whichever comes first, insurers may continue to
22 offer and market previously approved long-term care
23 insurance policies and certificates.

24 SEC. 7. Section 10236.13 is added to the Insurance
25 Code, to read:

26 10236.13. Approval of all premium rate schedule
27 increases shall be subject to the following requirements:

28 (a) Premium rate schedule increases shall
29 demonstrate that the sum of the accumulated value of
30 incurred claims, without the inclusion of active life
31 reserves, and the present value of future projected
32 incurred claims, without the inclusion of active life
33 reserves, will not be less than the sum of the following:

34 (1) The accumulated value of the initial earned
35 premium times 58 percent.

36 (2) Eighty-five percent of the accumulated value of
37 prior premium rate schedule increases on an earned
38 basis.

39 (3) The present value of future projected initial
40 earned premiums times 58 percent.

1 (4) Eighty-five percent of the present value of future
2 projected premiums not in paragraph (3) on an earned
3 basis.

4 (b) In the event the commissioner determines that a
5 premium rate increase is justified due to changes in laws
6 or regulations that are retroactively applicable to
7 long-term care insurance previously sold in this state, a
8 premium rate schedule increase may be approved if the
9 increase provides that 70 percent of the present value of
10 projected additional premiums shall be returned to
11 policyholders in benefits and the other requirements
12 applicable to other premium rate schedule increases are
13 met.

14 (c) All present and accumulated values used to
15 determine rate increases should use the maximum
16 valuation interest rate for contract reserves. The actuary
17 shall disclose as part of the actuarial memorandum the use
18 of any appropriate averages.

19 (d) If the requested premium rate schedule increase
20 on any policy form exceeds 15 percent or the requested
21 premium rate schedule increase on any policy form plus
22 all prior increases in the premium rate schedule for the
23 same policy form exceed 15 percent, no request for a rate
24 increase on any policy form shall be approved by the
25 commissioner except as follows: all the insurer's
26 individual experience on long-term care policy forms
27 issued in this state are pooled together to project future
28 claims experience and the combined experience satisfies
29 the requirements in subdivision (a). An insurer is not
30 precluded from filing requests for premium rate schedule
31 increases on all its policy forms if the combined
32 experiences after pooling all its prior policy forms satisfies
33 the requirements of subdivision (a).

34 (e) No approval for an increase in the premium
35 schedule shall be granted unless the actuary performing
36 the review for the commissioner certifies that if the
37 requested premium rate schedule increase is
38 implemented and the underlying assumptions, which
39 reflect moderately adverse conditions, are realized, no

1 further premium rate schedule increases are anticipated.
2 The certification may rely on supporting data in the filing.

3 (f) The provisions of this section are applicable to all
4 policies and certificates issued on or after July 1, 2002.
5 Until July 1, 2002, or 90 days after approval of policies and
6 certificates submitted for approval pursuant to this
7 section, whichever comes first, insurers may continue to
8 offer and market previously approved long-term care
9 insurance policies and certificates.

10 SEC. 8. Section 10236.14 is added to the Insurance
11 Code, to read:

12 10236.14. Premium rate schedule increases that have
13 been approved shall be subject to the following:

14 (a) For each rate increase that is implemented, the
15 insurer shall file for approval by the commissioner
16 updated projections, as defined in paragraph (1) of
17 subdivision (b) of Section 10236.12, annually for the next
18 three years and include a comparison of actual results to
19 projected values. The commissioner may extend the
20 period to greater than three years.

21 (b) (1) If the commissioner has determined that the
22 actual experience following a rate increase does not
23 adequately match the projected experience and that the
24 current projections under moderately adverse conditions
25 demonstrate that incurred claims will not exceed
26 proportions of premiums specified in subdivision (a), the
27 commissioner may require the insurer to implement any
28 of the following:

29 (A) Premium rate schedule adjustments.

30 (B) Other measures to reduce the difference between
31 the projected and actual experience.

32 (2) In determining whether the actual experience
33 adequately matches the projected experience,
34 consideration should be given to paragraph (5) of
35 subdivision (b) of Section 10236.12, if applicable.

36 ~~(e) The insurer shall provide a contingent benefit~~
37 ~~upon lapse that shall be made available not less than 90~~
38 ~~days following any increase in premium rates. The~~
39 ~~contingent benefit upon lapse shall be triggered each~~
40 ~~time a premium increase is granted. The contingent~~

~~benefit upon lapse shall be a fully paid-up shortened benefit period, and shall be 100 percent of the cumulative premium paid. The type of contingent benefit upon lapse provided shall be the same as benefits purchased under the lapsed contract. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase. The notice shall include a referral to the local Health Insurance Counseling and Advocacy Program or to the toll-free telephone number ((800) 434-0222) of the Health Insurance Counseling and Advocacy Program.~~

~~(d) (1) If the rate increase is not the first rate increase requested for the specific policy form or forms, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated.~~

~~(2) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may take appropriate action, including, but not limited to, requiring the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage based on original issue age with one or more reasonably comparable products being offered by the insurer or its affiliates.~~

~~(e)~~

~~(c) If the commissioner demonstrates, based upon credible evidence, that an insurer has engaged in a persistent practice of filing inadequate premium schedules, the commissioner may, in addition to any other authority of the commissioner under this chapter, and after the insurer is afforded proper notice and due process, prohibit the insurer from filing and marketing comparable coverage for a period of up to five years or~~

1 from offering all other similar coverages, and may limit
2 marketing of new applications to the products subject to
3 recent premium rate schedule increases.

4 ~~(f)~~

5 (d) This section shall not apply to life insurance
6 policies and certificates that accelerate benefits for
7 long-term care.

8 ~~(g)~~

9 (e) The provisions of this section are applicable to all
10 policies and certificates issued on or after July 1, 2002.
11 Until July 1, 2002, or 90 days after approval of policies and
12 certificates submitted for approval pursuant to this
13 section, whichever comes first, insurers may continue to
14 offer and market previously approved long-term care
15 insurance policies and certificates.

